

FILED

DEC 13 1960

IN THE SUPREME COURT OF THE UNITED STATES

JAMES A. BOWNING, Clerk

October Term, 1960

No. 155

MICHIGAN NATIONAL BANK, a banking association
organized under the laws of the United States,

Appellant,

NATIONAL BANK OF WYANDOTTE, THE FIRST
NATIONAL BANK (THREE RIVERS, MICHIGAN),
COMMERCIAL NATIONAL BANK OF IRON MOUN-
TAIN, THE NATIONAL BANK OF JACKSON, and
THE FIRST NATIONAL BANK AND TRUST COM-
PANY OF KALAMAZOO, banking associations organ-
ized under the laws of the United States,

Intervening Plaintiffs,

VS.

STATE OF MICHIGAN, DEPARTMENT OF REVENUE
OF THE STATE OF MICHIGAN, and LOUIS M. NIMS,
STATE COMMISSIONER OF REVENUE,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF MICHIGAN

Objections to and Motion to Dismiss Motion of Sixty-
Eight Banks in Michigan for Leave to File a Brief as
Amici Curiae and Brief Amici Curiae

PAUL L. ADAMS

Attorney General

Samuel J. Torina

Solicitor General

T. Carl Holbrook

William D. Dexter

Business Address:

The Capitol

Lansing, Michigan

Assistants Attorney General

For Appellees

MICROCARD

TRADE MARK



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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1960

No. 155

MICHIGAN NATIONAL BANK, a banking association organized under the laws of the United States,

Appellant, ●

NATIONAL BANK OF WYANDOTTE, THE FIRST NATIONAL BANK (THREE RIVERS, MICHIGAN), COMMERCIAL NATIONAL BANK OF IRON MOUNTAIN, THE NATIONAL BANK OF JACKSON, and THE FIRST NATIONAL BANK AND TRUST COMPANY OF KALAMAZOO, banking associations organized under the laws of the United States,

Intervening Plaintiffs,

vs.

STATE OF MICHIGAN, DEPARTMENT OF REVENUE OF THE STATE OF MICHIGAN, and LOUIS M. NIMS, STATE COMMISSIONER OF REVENUE,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

Objections to and Motion to Dismiss Motion of Sixty-Eight Banks in Michigan for Leave to File a Brief as Amici Curiae and Brief Amici Curiae

Appellees object to the "Motion for Leave to File a Brief as Amici Curiae" (hereinafter referred to as the "motion") filed in this cause by sixty-eight banks in Michigan and have withheld their consent from the filing of the brief attached to said motion (hereinafter referred

to as the "brief amici curiae") for the following reasons, to-wit:

1. That the stated purpose of the motion and brief amici curiae of the sixty-eight banks in Michigan is to establish that the position of those banks in regard to Act No. 9 of the Michigan Public Acts of 1953 is contrary to the position of the Michigan Bankers Association as set forth in that Association's amicus curiae brief filed in the trial court, as follows:

“ “The Michigan Bankers Association has followed the trial of this case and requested permission to file this brief because of its conviction that the present system of the State of Michigan for the taxation of banks is reasonable from the viewpoint of the public, equitable from the viewpoint of the competitors, and practical from the viewpoint of the banks themselves. Actual experience with the taxation system shows that it has produced a reasonable amount of revenue to the State; that it has not created any competitive disadvantage among the various types of institutions; and that it has proven to be simple to administer. Such a system is obviously desirable, and this association, believing the system to be entirely legal within the limitations of the Federal Constitution and statutes, does not want to see it destroyed.” ” (R. 1336-1337)

2. That the affidavit of Ralph L. Stickle, attached hereto and made a part hereof, clearly demonstrates that the membership of the Michigan Bankers Association was apprised of the position taken by that Association as to Act No. 9 of the Michigan Public Acts of 1953, that member banks were requested to offer comments in regard to such positions, and that no bank other than the Michigan

National Bank ever objected to the Association in regard to that position.

3. That as established by the affidavits; attached hereto and made a part hereof, of officers of two of the sixty-eight banks listed as amici curiae on the motion and brief amici curiae, their participation was solicited by employees of the Michigan National Bank and at the time of solicitation they were handed only the documents referred to in their affidavits, which are attached hereto and labeled "Document No. 1" and "Document No. 2," consisting of a proposed brief amicus curiae of banks operating in Michigan, signed by Howlett, Hartman and Beier, Attorneys for the Community National Bank of Pontiac, and an authorization that the name of the solicited bank be added to a brief amicus curiae in the United States Supreme Court, No. 155.

4. That as further established by the aforesaid affidavits referred to in No. 3. above, when their participation in this cause was solicited and they signed authorizations to have the names of their respective banks appear on an amicus curiae brief in this cause, they were not informed of the true nature of the controversy, they had not examined any records or briefs in this cause, they were not familiar with Michigan's taxation of savings and loan associations as compared to banking associations, and they did not intend to take a position as to the desirability, feasibility and validity of Art No. 9 of the Michigan Public Acts of 1953.

5. That the content of the motion and brief amici curiae is in complete conflict with the content of the attached affidavit of Ralph L. Stickle, setting forth the position of the Michigan Bankers Association, and the affidavits of the officers of two of the amici curiae banks; and that the

affidavit of Ralph L. Stickle sets forth the position of at least the overwhelming majority of the 390 banks in Michigan.

6. That only the five intervening-plaintiff banks in this cause and the Community National Bank of Pontiac and Community National Bank of Ithaca, of all the banks listed in the motion and the brief amici curiae, have paid under protest or sought to recover any taxes imposed by Act No. 9 of the Michigan Public Acts of 1953 [although the right to recover any such taxes is subject to a three-year statute of limitations] or have in any way attempted to participate in this cause until specifically solicited by appellant.

7. That under *Union Bank and Trust Co. v. Phelps*, (1933) 288 U.S. 181, and the severability statute of the State of Michigan (Mich. Comp. Laws 1948, § 8.5; Mich. Stat. Ann. (Henderson) § 2.216), the invalidation of the share tax as to national banking associations could not inure to the benefit of state banking associations.

8. That subsequent to the filing of the motion of the sixty-eight banks in Michigan for leave to file a brief as amici curiae in this cause, certain of said banks have withdrawn their authorizations and asked that their names be dropped from participating in this cause as amici curiae on behalf of the appellant, Michigan National Bank.

9. That the brief amici curiae does not conform to the requirements of Rule 42, paragraph 3, of the Revised Rules of the Supreme Court of the United States. It is not an effort to place before this Court *facts* which the amici curiae banks believe will not be adequately presented or dealt with in the briefs of the principal litigants to this cause, but is purportedly offered as the position of sixty-eight banks, *without any proof*.

10. That the above statements clearly establish that the participation of the sixty-eight banks as amici curiae has been directly solicited by the Michigan National Bank (as specifically alleged in the attached affidavits of officers of two of such banks) so that the appellant may use the product of this solicitation, namely, the permission to use the names of these banks on an amici curiae brief in this cause, in an attempt to mislead this Court into believing that the position taken by the Michigan Bankers Association as expressed in paragraph 1 above is not representative of the Michigan banks.

It is therefore respectfully submitted that since the motion and brief amici curiae constitute but an effort of the appellant to extend its lawsuit beyond the facts established in this cause, and since the brief amici curiae does not conform to the requirements of Rule 42, paragraph 3, of the Revised ^{Rules} Statutes of the Supreme Court of the United States, the motion of the sixty-eight banks in Michigan to file a brief amici curiae should be dismissed and both that motion and the brief amici curiae attached thereto should be stricken from the files of this cause as constituting merely a groundless allegation concerning the position of sixty-eight banks in Michigan, being in direct conflict with the affidavits filed in support of this motion and these objections.

PAUL L. ADAMS,
Attorney General

Samuel J. Torina,
Solicitor General

T. Carl Holbrook,
William D. Dexter
Assistants Attorney General

William D. Dexter
Assistant Attorney General

For Appellees
The Capitol
Lansing, Michigan

DOCUMENT NO. 1

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1960
No. 155

MICHIGAN NATIONAL BANK,
ET AL.,

Appellants,

vs.

MICHIGAN, ET AL.

BRIEF AMICUS CURIAE
OF
BANKS OPERATING IN MICHIGAN

The undersigned banking associations operating in the State of Michigan are deeply concerned about the outcome of the above appeal because of the serious impact it may have upon our future and continued operations.

It is their position that

1. Savings and loan associations are their most vigorous competitors in the business of making residential mortgage loans in the localities where they do business.

2. Such business is a most vital and important part of the lending business of the undersigned banks.

3. Act 9 of the Public Acts of Michigan of 1953 imposes a tax on shares of banks eight to thirteen times greater than that imposed upon moneyed capital invested in savings and loan associations.

4. Such tax by the State of Michigan is discriminatory, highly inequitable and has given savings and loan associations a great and unwarranted competitive advantage, and, if continued, will seriously injure the undersigned banks.

CONCLUSION

To safeguard the interests of banks in the State of Michigan, we respectfully submit that this Court should uphold the position of appellant bank in the above case and reverse the judgment of the Michigan Supreme Court.

COMMUNITY NATIONAL BANK OF PONTIAC

By Howlett, Hartman and Beier,
Attorneys

DOCUMENT NO. 2

Howlett, Hartman and Beier
1000 Pontiac State Bank Building
Pontiac, Michigan

Gentlemen:

You are authorized to add our name to that of the Community National Bank and other banks, joining in a Brief Amicus Curiae in the United States Supreme Court, No. 155.

Very truly yours

-8-

**AFFIDAVIT OF RALPH L. STICKLE
EXECUTIVE MANAGER AND OFFICER,
MICHIGAN BANKERS ASSOCIATION**

STATE OF MICHIGAN }
COUNTY OF INGHAM } ss.

Now comes Ralph L. Stickle, who being first duly sworn, on his oath deposes and says that he is an officer and the Executive Manager of the Michigan Bankers Association, located at 1502 Bank of Lansing Building, Lansing, Michigan; that the Michigan Bankers Association membership consists of every bank in Michigan, numbering approximately 390; that in his capacity as officer and Executive Manager of the Michigan Bankers Association, he attends the Executive Committee and other committee meetings, including the Taxation Committee meetings, and that he is familiar with the action taken by these committees; that he is charged with the duty and responsibility of implementing such committee action and disseminating information concerning the same; that as part of his duties, he keeps minutes of the various committee meetings, including Executive Committee meetings, and from time to time issues bulletins that are distributed to the members and that become permanent bound records of the Michigan Bankers Association, setting forth the official position of the Association in reference to the matters contained in such bulletins; that he has under his custody and control, in the executive offices of the Michigan Bankers Association at the above address, records indicating the official action taken by such committees; that he is familiar with the position of the Michigan Bankers Association with reference to the enactment and support of the legislation contained in Act 182 of the Michigan Public Acts of 1952 and Act 9 of the Michigan Public Acts of 1953; that he is acquainted with the litiga-

tion pending between the State of Michigan and the Michigan National Bank concerning the validity of the aforesaid Act 9 and that he has been authorized to make this affidavit in support of the position taken by the State of Michigan in reference to the aforesaid Act 9; that all the matters herein set forth are within his personal knowledge; that he is not disqualified from being a witness and, if he is sworn as a witness, he could testify competently to the matters hereinafter set forth; that in support of the State of Michigan's position in reference to the aforesaid Act 9, he further deposes and says:

1. That as shown by the minutes of the Michigan Bankers Association (hereinafter referred to as the "Association"), Act 182 of the Michigan Public Acts of 1952, which imposed an additional 4 mill tax on the capital account of national and state banking associations and trust companies, was felt to be unconstitutional as applied to national banks and that by letter dated April 22, 1952, incorporated in the minutes of the Association, the Governor of the State of Michigan, the Hon. G. Mennen Williams, was informed of this fact;
2. That both the Legislature and the Association were concerned with the problem of uniform, equitable taxation of state and national banks and trust companies; and counsel of the Association, by action of the Legislative, Taxation, and Executive Committees, were instructed to work with the Legislative and Taxation Committees of the Association to draft and recommend to the Legislature what was felt to be a feasible, valid and equitable tax for banking associations and trust companies in the State of Michigan within the limitations placed upon states to tax national banks by section 5219 of the Revised Statutes of the United States;

3. That the Association, through its counsel and Taxation and Legislative Committees, unanimously recommended to the Legislature the adoption of Act 9 of the Michigan Public Acts of 1953 to replace the additional tax imposed on banks and trust companies by Act 182 of the Michigan Public Acts of 1952;

4. That the Executive Committee, on February 11, 1954, set forth in the Association's Official Minutes, on pages 575 and 576, the Association's official position in regard to Act 9 of the Michigan Public Acts of 1953 as follows:

"The Michigan Intangibles Tax law was the subject of considerable discussion brought about by the fact that a brief has been filed by the Michigan National Bank to recover taxes paid under this act, the main contention being that the tax is unconstitutional, based on the premise that bank capital and other monied capital in substantial competition are not taxed alike, as the Constitution requires.

"It was pointed out that in 1953 the Michigan Bankers Association cooperated with members of the Legislature to effect an amendment to the Michigan Intangibles Tax Act placing state banks, national banks, and trust companies on a common tax basis. The committee felt that because of the fact that the Michigan Bankers Association, through its committees, sponsored this legislation in the interest of placing state banks, national banks and trust companies on a common tax basis, the Association should stand on the side of the State and the Legislature in support of the State's contention that the tax is legal and constitutional. As a result the following resolution was unanimously adopted:

"WHEREAS the Michigan Bankers Association has been requested to appear as a friend of the court and to file a brief in the suit now pending against the State of Michigan questioning the constitutionality of the Intangibles Tax Act and

"WHEREAS this legislation has the support of the Michigan Bankers Association through its various committees, it is therefore

"RESOLVED, that the Association appear as a friend of the court and that the counsel for the Association be directed to represent the Association in this matter."

5. That pursuant to this resolution, counsel for the Association have participated in support of the position of the State of Michigan in the litigation between the Michigan National Bank and the State of Michigan over the validity of Act 9 of the Michigan Public Acts of 1953.

6. That the position of the Association is properly stated in the brief filed on behalf of the Association in the Court of Claims for the State of Michigan, wherein it is stated:

"The Michigan Bankers Association has followed the trial of this case and requested permission to file this brief because of its conviction that the present system of the State of Michigan for the taxation of banks is reasonable from the viewpoint of the public, equitable from the viewpoint of competitors, and practical from the viewpoint of the banks themselves. Actual experience with the taxation system shows that it has produced a reasonable amount of revenue to the State; that it has not created any competitive disadvantages among the various types of institutions; and that it has proven to be simple to admin-

ister. Such a system is obviously desirable, and this Association, believing the system to be entirely legal within the limitations of the Federal Constitution and Statutes, does not want to see it destroyed."

7. That the *Legal Bulletin* of the Michigan Bankers Association, No. 2395, dated July 2, 1959, and the *General Bulletin* of the Association, No. 2407, dated April 7, 1960, both appended hereto in material part as Exhibits "A" and "B", respectively, set forth (among other matters) the official position of the Association relative to the Intangibles Tax imposed on bank shares by Act 9 of the Michigan Public Acts of 1953.

8. That such bulletins are sent to all members of the Association and that the Association has received no objection to the position taken by it as there announced in reference to Act 9 except the objection of the Michigan National Bank.

9. That the position of the current Taxation Committee concerning Act 9 is stated thusly on page 21 of the Association's 1959-1960 Annual Report:

"The Committee unanimously adopted a resolution upholding the action of a previous M.B.A. [Michigan Bankers Association] Taxation Committee in its defense of the intangible tax. It was felt that this action was in keeping with our obligation to the legislature, and that a tax review at this time would not be favorable. * * * [Bracketed material added]

10. That the position set forth in the aforesaid amicus curiae brief (paragraph 6 above) and the two bulletins referred to in paragraph 7 above represent the only position the Association has taken pertaining to Act 9 of the

Michigan Public Acts of 1953 and does constitute the current position of said Association.

Further, deponent sayeth not.

/s/ ~~RALPH L. STICKLE~~

Ralph L. Stickle,

On this 9th day of December, A.D. 1960, personally appeared before me, a Notary Public in and for said County, Ralph L. Stickle, who being first duly sworn did say that he is an officer and the Executive Manager of the Michigan Bankers Association, located at 1502 Bank of Lansing Building, Lansing, Michigan; that he has read the foregoing Affidavit by him subscribed and knows the contents thereof and that the statements contained therein are true of his own knowledge, except as to those matters stated on information and belief, and as to those matters, he believes it to be true; and that he is duly authorized to sign and verify the foregoing affidavit on behalf of said Association.

/s/ LEONA M. HUDNUT

Notary Public, Ingham County,
Michigan

My commission expires 10-6-64

Exhibit "A"

Organized M B A 1887

LEGAL BULLETIN

MICHIGAN BANKERS ASSOCIATION

Lansing 16

Executive Manager

RALPH L. STICKLE

1502 Bank of Lansing Building

Telephone IVanhoe 2-0679

No. 2395

July 2, 1959

TAXES

The purpose of this bulletin is to lay before the membership the Michigan Bankers Association's position relative to the Intangibles Tax and other tax proposals currently being considered by the Michigan State Legislature.

THE INTANGIBLES TAX

The present Intangibles Tax Law as it applies to bank shares and deposits, was conceived and sponsored by the Michigan Bankers Association through the Association's Taxation Committee. The membership of this committee was composed of a cross-section of Michigan banking, representing both national and state banks, and both large and small banks. Prior to the adoption of the present Intangibles Tax Law, there existed a serious tax inequity between state and national banks. National banks were protected by Section 5219 of the National Banking Act which states that a State can tax a national bank by only one of four methods:

- (1) A tax on bank shares
- (2) A tax on the income on bank shares
- (3) A tax measured by bank income
- (4) An income tax on the bank.

State banks, on the other hand, are exposed to any tax which the Legislature may see fit to impose.

In writing the present Intangibles Tax Law, the Legislature agreed to our proposal that all banks in the state should be taxed exactly alike and to accomplish this, gave state banks an exemption from the franchise tax which they had been paying. The Legislature further agreed that since national banks were protected by Section 5219 and therefore, could not be subject to other taxes which in the future might be imposed on business and industry in this State, both state and national banks in the future would be exempt from such tax proposals. On the assurance of the Association that we would help the State defend any attack on the legality of the tax, the Legislature enacted the statute as we proposed it. Subsequently, when the State adopted a business activities tax, the Legislature lived up to its agreement and exempted all banks from this tax. It is our firm conviction that the Association has a responsibility to the Legislature to live up to the agreement which was made at that time, especially in view of the fact that the Legislature has lived up to its agreement to impose only one tax on banks in this state, and to give state banks the same protection which national banks enjoy under Section 5219.

LEGALITY OF THE INTANGIBLES TAX QUESTIONED

As is true of almost any tax, the legality of the Michigan Intangibles Tax Act has been questioned. The Michigan National Bank, together with certain other national banks in this State, brought suit against the State of Michigan for recovery of the Intangibles Tax on bank shares which it claims are being paid illegally for the reason that Section 5219 of the National Banking Act

states that all moneyed capital in substantial competition must be taxed alike. In its case against the State, Michigan National Bank maintains that savings and loan associations are in substantial competition and do not pay the same rate of tax as do banks under the Intangibles Tax Act.

The Michigan Bankers Association, together with several other banks in the state of Michigan, filed a brief as friend of the court, joining with the Michigan Department of Revenue in defense of the present Intangibles Tax Act, both because we feel that we had an obligation to the Michigan State Legislature, and because we felt that the Intangibles Tax Act was desirable.

OTHER MONEYED CAPITAL

The Michigan National Bank's case is directed against savings and loan associations, maintaining that savings and loan associations constitute other moneyed capital in substantial competition with banks. The Michigan National Bank's position was explained in a letter from that bank to the banks in this State, dated June 8, 1939. The case involving savings and loan associations is now pending in the Michigan Supreme Court.

We appreciate that savings and loan associations are stiff competition, some of which may be due to a favored tax treatment but basically, this is because of their favored tax treatment by the Federal Government, not the State of Michigan. In comparison, the State tax is trivial. Furthermore, whether or not there is any favoritism shown them by the present Michigan share tax depends entirely on whether you view their "savings accounts" as being analogous to bank shares or bank deposits. If such accounts are similar to deposits, there is no inequity.

If they are similar to shares, there is an inequity. The Michigan Bankers Association has felt that while these accounts may be similar to bank shares from the legal point of view, for all practical business purposes they are more analogous to bank deposits and therefore, the respective tax burdens should be measured by spreading them over the total resources of each institution. Viewed in this manner, the present tax is not unfair and imposes as much tax burden on savings and loan associations as it does on banks, as is indicated by the following tax comparison:

TAX COMPARISONS OF MICHIGAN BANKS AND SAVINGS AND LOAN ASSOCIATIONS (1957-1958)

	Michigan Banks	Michigan Savings & Loan Associations
Total Assets	\$8,609,444,000	\$1,364,033,626
Gross Income	\$ 322,286,000	\$ 60,024,713
Expenses (including dividends on savings account shares of savings and loan associations)	231,523,000	48,939,502
Net Income before taxes and in case of savings & loans before reserve additions	\$ 90,763,000	\$ 11,085,211
Intangible Taxes	\$ 5,900,251	\$ 454,899
Franchise Taxes	-	284,372
Total	\$ 5,900,251	\$ 739,271

Ratio of franchise and intangibles taxes to:

Total Assets	.069%	.054%
Net Income before income taxes and in case of savings and loans before reserve additions	6.50%	6.67%

We will welcome your comments, suggestions and criticisms in our effort to maintain a fair and equitable State Tax on Michigan financial institutions.

Very truly yours,
Ralph L. Stickle
Executive Manager

Exhibit "B"

Organized M B A 1887

GENERAL BULLETIN

MICHIGAN BANKERS ASSOCIATION

Lansing 16

Executive Manager

RALPH L. STICKLE

1502 Bank of Lansing Building

Telephone IVanhoe 2-0679

No. 2407

April 7, 1960

THE QUESTION OF TAX EQUALITY

In a letter dated March 31, 1960, Mr. Howard J. Stoddard has solicited your assistance in the efforts of the Michigan National Bank to invalidate the Michigan Intangibles Tax insofar as it applies to national banks.

The Michigan National Bank commenced its suit in the State Court of Claims which resulted in a decision sustaining the tax. On appeal to the Michigan Supreme Court, the decision of the Court of Claims was affirmed. The Michigan National Bank has indicated its intention of taking a further appeal to the United States Supreme Court and in this connection has invited the assistance of all Michigan banks. In doing so, however, Mr. Stoddard requests that the Michigan Bankers Association reverse its position on the Intangibles Tax.

The Executive Committee of your Association feels that in addition to the information contained in the Association's Legal Bulletin of July 2, 1959, a further explanation of the position of the Association should be made.

Back in 1952, when the challenged portion of the Act was being considered, the Taxation Committee of the Association was working with the Taxation Committee of the Legislature in an attempt to devise a new tax law which would raise additional revenue but would be reasonably fair to all banks, both state and national banks. There is no record that the Michigan National Bank made any effort to oppose the enactment of the legislation which resulted from the joint efforts of these committees.

At that time there were many problems which faced the Taxation Committee but the chief problem was how to tax national banks at the same rate as state banks, and still not have the law declared invalid under the limitations of the National Bank Act.

The Legislature was considering an income tax for banks because some felt that there was less danger of an income tax being held invalid in view of precedents

from other states. The Taxation Committee of the Association was opposed to such a special income tax levied by the State of Michigan on banks alone and finally prevailed on the Legislature to put banks under the Intangibles Tax Act.

In doing this, the Legislature requested and received the assurance of the Association that if the validity of the new tax was questioned by any national bank (no state bank could raise this question), the Association would make every reasonable effort to support the State of Michigan in upholding the Act. Accordingly, in fulfillment of its obligation, when the Michigan National Bank brought its suit, the Association filed a brief as amicus curiae in the lower court supporting the validity of the Act.

So far as the State tax system is concerned, the position of the Association ever since 1952 has been as quoted in Mr. Stoddard's letter. The Association has felt that the tax was easy to administer, that it was reasonable in amount, that it was more desirable in form than a special tax on income, that it taxed national banks as much as state banks, and that it taxed savings and loan associations substantially as much as banks. The fact that savings and loan associations, in addition to the Intangibles Tax, must pay franchise taxes and personal property taxes (from which taxes banks are exempt) must be considered an equalizing factor used by the Legislature to establish practical equality of the total tax burden imposed on these two types of financial institutions.

The Michigan National Bank does not agree that the State taxes savings and loan associations as much as banks, but that is because the Michigan National takes the position that in measuring the burden of the tax on

the two different institutions, bank deposits should be ignored and the tax burden should be measured merely against the bank's stock, surplus and undivided profits.

On this basis of measurement the tax burden is not equal. However, both the lower court and the Supreme Court refused this measurement basis and held that the tax burden of all taxes should be measured by the **total assets** of both institutions which, of course, would include bank deposits. Measured in this way, the court found that the ratio of state and local taxes to total assets was .089 for savings and loan associations as compared to .091 for the Michigan National Bank. On these facts the Supreme Court said:

"The record establishes that there was practical equality of the total tax imposed upon building and loan associations and upon national banks . . ."

This is the exact position taken by your Association from the very beginning.

In addition, your Association has felt that it would be unwise to have the tax system overthrown because it would mean that national banks, but not state banks, would escape State taxation until a new tax could be devised, and that in all probability any new tax would necessarily take the form of a special income tax on banks.

MICHIGAN BANKERS ASSOCIATION

By Direction of the
Executive Committee

**AFFIDAVIT OF W. O. HALL, CASHIER OF THE
FARMERS BANK OF MASON**

STATE OF MICHIGAN }
COUNTY OF INGHAM } ss.

W. O. Hall, being first duly sworn, deposes and says:

1. That he is the Cashier of The Farmers Bank of Mason, which is located in Mason, Michigan.

2. That on November 15, 1960, Mr. Miles Grant, Vice-President and Cashier of the Michigan National Bank, accompanied by a man not known to affiant, called on affiant with documents, being the same as attached to appellee's motion to dismiss certain moving parties' motion of sixty-eight banks in Michigan for leave to file the attached brief as amici curiae and brief as amici curiae, and advised him that the bank could join as amicus curiae without paying any attorney fees.

3. That Mr. Miles Grant requested that affiant, with no expense to his bank, sign the authority for Howlett, Hartman and Beier to add the name of The Farmers Bank of Mason to that of the Community National Bank of Pontiac and others joining in a brief amicus curiae in the United States Supreme Court, No. 155.

4. That from time to time he had received letters from the Michigan National Bank concerning the Mason Bill pending in the United States Congress and that he thought the authority requested concerned the Mason Bill. Also that he did not realize that the said authority concerned itself with the personal law suit of Michigan National Bank.

5. That the appellant's representatives did not talk about Michigan intangibles taxes and that he was not and is not aware of the position of the Michigan Bankers Association in this cause.

6. That he thus inadvertently signed the authority and handed it back to Mr. Miles Grant at the time of his visit on November 15, 1960, without discussing the matter with the Board of Directors.

7. That deponent does not have knowledge of the difference in the tax treatment imposed by the state of Michigan on savings and loan associations and those imposed on banks.

8. That he does not have any opinion as to whether Act No. 9, Michigan PA 1953, discriminates against national or state banks.

9. That he is not aware of the position taken by the Michigan Bankers Association, of which he is a member.

10. That as of this date he has not seen nor has he received a copy of the motion for leave to file a brief as amici curiae, nor the brief amici curiae filed in the United States Supreme Court, October Term, No. 155.

11. Finally, that he wishes to withdraw The Farmers Bank of Mason as a moving party from the motion and brief filed in No. 155.

Further deponent sayeth not.

W. O. Hall—Cashier
The Farmers Bank of Mason

Subscribed and sworn to before me a Notary Public this
7th Day of December, A. D. 1960.

Mary Smith

Notary Public, Ingham County,
Michigan

My Commission Expires
July 30, 1961

**AFFIDAVIT OF C. L. JENKINS ASSISTANT
VICE-PRESIDENT OF THE STATE BANK
OF ST. JOHNS**

STATE OF MICHIGAN }
COUNTY OF CLINTON } ss.

C. L. Jenkins, being first duly sworn, deposes and says:

1. That he is an Assistant Vice-President of The State Bank of St. Johns, which is located at St. Johns, Michigan.

2. That on November 17, 1960, Mr. Miles Grant, Vice-President and Cashier of the Michigan National Bank, accompanied by a man who was introduced as being the Michigan National Bank's attorney, left documents with him, being the same as attached to appellee's motion to dismiss certain moving parties' motion of sixty-eight banks in Michigan for leave to file the attached brief as amici curiae and brief amici curiae, and advised him that the bank could join as amicus curiae without paying any attorney fees.

3. That on November 18, 1960, he informed the Executive Vice-President, Mr. L. W. Wolf, of the visit to the bank of representatives of appellant bank during his absence and gave Mr. Wolf the documents left by them.

Further deponent sayeth not.

C. L. JENKINS

Assistant Vice-President

Subscribed and sworn to before me a Notary Public on
this 6th day of December, A. D. 1960.

ARDEN J. COOK

Notary Public, Clinton County,
Michigan

My Commission Expires
Sept. 5, 1961

**AFFIDAVIT OF L. W. WOLF EXECUTIVE VICE-
PRESIDENT OF THE STATE BANK
OF ST. JOHNS**

STATE OF MICHIGAN }
COUNTY OF CLINTON } ss.

L. W. Wolf, being first duly sworn, deposes and says:

1. That he is the Executive Vice-President of The State Bank of St. Johns, which is located at St. Johns, Michigan.

2. That on November 17, 1960, Mr. Miles Grant, Vice-President and Cashier of the Michigan National Bank, accompanied by a man who was introduced as being the Michigan National Bank's attorney, left documents, being the same as attached to appellee's motion to dismiss certain moving parties' motion of sixty-eight banks in Michigan for

leave to file the attached brief as amici curiae and brief amici curiae, with Mr. C. L. Jenkins, Assistant Vice-President of The State Bank of St. Johns.

3. That upon deponent's return to the bank on November 18, 1960, Mr. C. L. Jenkins gave him the documents left by representatives of appellant bank and that Mr. Jenkins advised him that the bank could join as amicus curiae without paying any attorney fees, and that deponent signed the authorization to add the name of The State Bank of St. Johns as a moving party to that of the Community National Bank of Pontiac and other banks joining in a brief amici curiae in the United States Supreme Court, No. 155.

4. That he returned such documents by mail, on or about November 19, 1960, without discussing the subject matter or the documents with the Board of Directors.

5. That he has never read the brief of either party in the case presently pending before the United States Supreme Court, being No. 155; he has not read the briefs in nor the opinions of the Michigan Supreme Court or the Court of Claims concerning the same matter; and, in like manner, deponent has not read the records therein nor has he ever attended any of the hearings in this cause.

6. That deponent has no knowledge of the difference in the tax treatment rendered savings and loan associations or banks by the state of Michigan.

7. That he does not have any opinion as to whether Act No. 9, Michigan PA 1953, discriminates against national or state banks.

8. That as of this date he has not seen nor has he received a copy of the motion for leave to file a brief as amici

curiae, nor the brief amici curiae filed in the United States Supreme Court, No. 155.

9. That he wishes to withdraw The State Bank of St. Johns as a moving party to the motion and brief filed in No. 155.

Further deponent sayeth not.

L. W. WOLF
Executive Vice-President

Subscribed and sworn to before me a Notary Public, this
6th day of December, A. D. 1960.

ARDEN J. COOK
Notary Public, Clinton County,
Michigan
My Commission Expires
September 5, 1961.

CERTIFICATE OF SERVICE

I hereby certify that copies of the aforesaid Objections to and Motion to Dismiss Motion of Sixty-Eight Banks in Michigan for Leave to File a Brief as Amici Curiae and Brief Amici Curiae have been served, by depositing the same in the United States mails, with first class air mail postage prepaid, upon the following counsel:

THOMAS G. LONG
VICTOR W. KLEIN
PHILIP T. VAN ZILE, II
HAROLD A. RUEMENAPP
1881 First National Building
Detroit 26, Michigan
Attorneys for Appellant and
Intervening Plaintiffs

DEAN G. BEIER
JAMES L. HOWLETT
1001 Pontiac State Bank Building
Pontiac, Michigan
Attorneys for the Applicant
Michigan Banks

On this _____ day of
December, A.D., 1960.

William D. Dexter
Assistant Attorney General